

ORIGINAL

Suite 1020
1401 H Street, N.W.
Washington, DC 20005
Office: 202/326-3818
Fax: 202/326-3826



Christopher M. Heimann
Director of Legal Affairs
Washington Office

EX PARTE OR LATE FILED

August 27, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RECEIVED

AUG 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte Statement**
CC Docket 96-98
UNE Remand Proceeding

Dear Ms. Salas:

On August 26, 1999, James Smith, Kathleen Franco, Gary Lytle and I met with Commissioner Powell, Kyle Dixon, Paul Jackson and Lee Carosi of Commissioner Powell's office to discuss Ameritech's position concerning the meaning of the Supreme Court's opinion in AT&T v. Iowa Utilities Board. We also discussed Ameritech's position on whether and where ULS should be available as a UNE. Ameritech provided data showing collocated competitors with switches on a wire center basis.

Sincerely,

A handwritten signature in cursive script, likely belonging to Christopher M. Heimann.

Attachment

cc: Commissioner Powell
Kyle Dixon
Paul Jackson
Lee Carosi



No. of Copies rec'd 0+2
List ABCDE

SUPREME COURT OPINION

The Court held that Section 251(d)(2) establishes “clear limits” on the Commission’s unbundling authority – specifically, it requires the Commission to determine on a rational basis which elements must be made available consistent with the goals of the Act and giving substance to the necessary and impair test.

- Goals of the Act –
 - Bring consumers the benefits of meaningful competition (lower prices and higher quality services) – not simply promote competitors.
 - Encourage new investment and innovation – requires the Commission to consider the social costs of unbundling.
- Section 251(d)(2) Requirements Disregarded in the *Local Competition Order* –
 - The Commission must examine supply substitutability – that is, whether reasonable and practicable alternatives are available outside the ILEC’s network – including through self-provision (p.735).
 - The Commission may not assume that “any” increase in cost or decrease in quality constitutes necessity or impairment. A competitor is not impaired just because it would be marginally less profitable without access to ILEC facilities (p. 735).
- Court’s Elaboration of Section 251(d)(2) Requirements –
 - The Court elaborated by reference to the ladder/lightbulb analogy: a CLEC is not impaired by lack of access to an ILEC’s ladder if, using a shorter ladder with arms outstretched, a CLEC could change a lightbulb (p. 735 n.11).
 - Thus, the test is not whether it is easier to reach a lightbulb with the ILEC’s ladder, but whether a CLEC can reach the lightbulb without it.
 - The Court further elaborated by stating that a mere increase in cost or decrease in quality would constitute impairment only in a perfectly competitive market in which all entrants were pricing at the margin (p. 735). In such a market, an increase in cost would deny a competitor a normal return on capital.

- *The clear implication is that if a CLEC can earn a **normal economic profit** (and enter the market in a reasonable time) without network elements, it is not impaired by lack of access.*
- Impairment Standard –
 - The test therefore is whether a reasonably efficient competitor would be denied a meaningful opportunity to compete if it were denied access to a particular UNE.
- Best Evidence –
 - The best evidence of what a reasonably efficient competitor **can** do is what competitors **are** doing. If CLECs have deployed their own facilities in a relevant market, any reasonably efficient competitor could do the same.

Collocated Competitors with Switches by Wire Center

Number of Competitors per AIT Wire Center	Ameritech Wire Centers		Lines Served		Cumulative % Lines Served		
	Cumulative Count	Cumulative Percentage	Cumulative Total	Cumulative Percentage	Largest Bus. Percentage	Other Bus. Percentage	Residential Percentage
7	2	0.2%	215,882	1.0%	3.4%	1.6%	0.1%
6 or more	7	0.6%	721,642	3.5%	7.3%	4.3%	1.9%
5 or more	15	1.3%	1,212,359	5.9%	11.4%	7.4%	3.5%
4 or more	34	3.0%	2,513,009	12.2%	20.2%	14.5%	8.7%
3 or more	57	5.0%	3,746,671	18.2%	26.5%	21.0%	14.5%
2 or more	119	10.5%	6,803,467	33.1%	45.6%	36.1%	27.7%
1 or more	256	22.7%	11,569,706	56.2%	68.2%	58.2%	51.2%
0 or more	1130	100.0%	20,583,377	100.0%	100.0%	100.0%	100.0%

Note: For the purposes of this analysis, AT&T, MCI WorldCom and McLeod's acquisitions were treated as one competitor under the parent company's name even though the respective companies have yet to consolidate all of their collocation and interconnection agreements. Therefore, AT&T and TCG were treated as one competitor; MCI metro, WorldCom, Brooks Fiber, and MFS were considered one competitor; and McLeod, Ovation, Phone Michigan, Dakota Services and QST were considered one competitor.

Collocated Competitors with Switches by Wire Center: Top 100 MSAs

Number of Competitors per AIT Wire Center	Ameritech Wire Centers		Lines Served		Cumulative % Lines Served		
	Cumulative Count	Cumulative Percentage	Cumulative Total	Cumulative Percentage	Largest Bus. Percentage	Other Bus. Percentage	Residential Percentage
7	2	0.4%	215,882	1.5%	4.7%	2.1%	0.1%
6 or more	7	1.3%	721,642	4.9%	10.3%	5.8%	2.6%
5 or more	15	2.7%	1,212,359	8.2%	16.0%	9.9%	4.9%
4 or more	33	6.0%	2,429,427	16.4%	27.7%	18.6%	11.7%
3 or more	53	9.7%	3,545,395	23.9%	35.7%	26.7%	18.9%
2 or more	103	18.9%	6,141,512	41.5%	56.9%	44.9%	34.9%
1 or more	186	34.1%	9,066,345	61.2%	73.2%	63.7%	56.2%
0 or more	546	100.0%	14,806,867	100.0%	100.0%	100.0%	100.0%

Note: For the purposes of this analysis, AT&T, MCI WorldCom and McLeod's acquisitions were treated as one competitor under the parent company's name even though the respective companies have yet to consolidate all of their collocation and interconnection agreements. Therefore, AT&T and TCG were treated as one competitor; MCI metro, WorldCom, Brooks Fiber, and MFS were considered one competitor; and McLeod, Ovation, Phone Michigan, Dakota Services and QST were considered one competitor. This analysis encompasses Ameritech cities in the Top 100 MSAs. These cities are Chicago, Detroit, Cleveland, Indianapolis, Milwaukee, Columbus, Grand Rapids, Dayton-Springfield, Akron, Gary, Toledo, Youngstown, and Ann Arbor.

Collocated Competitors with Switches by Wire Center: Top 50 MSAs

Number of Competitors per AIT Wire Center	Ameritech Wire Centers		Lines Served		Cumulative % Lines Served		
	Cumulative Count	Cumulative Percentage	Cumulative Total	Cumulative Percentage	Largest Bus. Percentage	Other Bus. Percentage	Residential Percentage
7	2	0.5%	215,882	1.8%	5.4%	2.5%	0.1%
6 or more	7	1.8%	721,642	5.9%	11.8%	6.9%	3.2%
5 or more	15	3.9%	1,212,359	9.8%	18.3%	11.8%	6.0%
4 or more	33	8.7%	2,429,427	19.7%	31.7%	22.2%	14.3%
3 or more	53	13.9%	3,545,395	28.8%	40.9%	31.9%	23.2%
2 or more	99	26.1%	5,984,966	48.6%	63.6%	52.4%	41.7%
1 or more	154	40.5%	8,072,327	65.5%	76.7%	67.7%	60.5%
0 or more	380	100.0%	12,321,837	100.0%	100.0%	100.0%	100.0%

Note: For the purposes of this analysis, AT&T, MCI WorldCom and McLeod's acquisitions were treated as one competitor under the parent company's name even though the respective companies have yet to consolidate all of their collocation and interconnection agreements. Therefore, AT&T and TCG were treated as one competitor; MCI metro, WorldCom, Brooks Fiber, and MFS were considered one competitor; and McLeod, Ovation, Phone Michigan, Dakota Services and QST were considered one competitor. This analysis encompasses Ameritech cities in the Top 50 MSAs. These cities are Chicago, Detroit, Cleveland, Indianapolis, Milwaukee, and Columbus.

Ameritech Business Customer Base by Linesize
Customers are Defined at Location Level

<u>Linesize</u>	<u># of Customers</u>	<u>% of Base</u>
1	557,298	42.2%
2	245,114	18.5%
3	159,433	12.1%
4	88,728	6.7%
5	54,993	4.2%
6-10	114,180	8.6%
11-15	40,713	3.1%
16-20	18,607	1.4%
21+	43,005	3.3%
Total	1,322,071	100%